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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,183	03/26/2004	Joseph P. Darst	DAR-0001	2945

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02/14/2006

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EXAMINER

MILLER, WILLIAM L

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,183

Applicant(s)

DARST ET AL.

Examiner

William L. Miller

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03262004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Invention I, claims 1-12, in the reply filed on 12-12-2005 is acknowledged. Non-elected claims 13-20 have been canceled per the applicant. New claims 21-26 read on the elected invention.

Claim Objections

2. Claim 21 is objected to because of the following informalities: the shelf is currently recited as a distinct element of the invention, however the lower panel defines/provides the shelf. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 7, 10, 12, 21, 22, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Turner (US#2356957).

5. Turner discloses a burial container capable of containing a body, comprising: a container body 101 having four side panels defining an enclosure and a top opening through which a body may be placed; a lower panel having an opening 16 capable of permitting communication of earth into the enclosure after valve/seal 17/18 degradation; and a removable lid 102.

6. Regarding claim 5, the container body and lid are concrete (page 1, col. 2, lines 28-29).

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7. Regarding claim 7, the opening 16 being viewed as a “central opening” as it is spaced inwardly from the perimeter of the lower panel.
8. Regarding claim 10, the portion of the lid directly contacting the seal 103 and the upper edge of the container body is being viewed as a peripheral lip.
9. Regarding claims 12 and 25, the portion of the lower panel between the opening(s) 16 and the side panels is being viewed as defining a shelf.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3, 9, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Patterson et al. (US#2927453).
12. Turner fails to disclose the concrete lid includes lifting eyes. Patterson discloses a burial container wherein the concrete lid includes lifting eyes 25 to facilitate raising and lowering the heavy lid during use. Therefore, as taught by Patterson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Turner by including lifting eyes for the lid thereby facilitating raising and lowering the heavy lid during use.
13. Regarding claims 9 and 24, the lifting eyes taught by Patterson are inherently “rust-resistant” to a degree as they are not immediately rusted upon use.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Patterson as applied to claim 3 above, and further in view of Gillepsie et al. (US#4200944).

15. Although Turner in view of Patterson fails to disclose the lifting eye is made of stainless steel, the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). In any event, Turner addresses the need for corrosion resistant materials (page 2, col. 1, lines 29-31) for the burial container. Gillepsie teaches a stainless steel lifting eye 18 for use in a corrosive environment (col. 3, lines 64-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Turner in view of Patterson, in view of the teachings of Gillepsie, such that the lifting eye was fabricated of stainless steel to deter corrosion thereof.

16. Claim 6, 8, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Trzesniewski (US#3273294).

17. Although Turner discloses the burial container may be made of reinforced concrete (page 2, col. 1, lines 29-30), Turner fails to specifically disclose reinforcing steel as claimed by the applicant. However, Trzesniewski discloses a burial container wherein container body 10-14 and lid 30 are made of steel reinforced 50 concrete (col. 4, lines 67-70) to enhance the structural integrity of the burial container. Therefore, as taught by Trzesniewski, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Turner by fabricating the container body and lid of steel reinforced concrete to enhance the structural integrity of the burial container.

18. Claims 11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Christensen (US#3230674).

19. Turner fails to disclose an indentation in the lid for weight reduction. However, Christensen teaches a burial container wherein the concrete lid 31 includes indentations 33 for the purpose of reducing the weight of the lid. Therefore, as taught by Christensen, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Turner by including indentations in the lid thereby reducing the weight of the lid.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is (571) 272-7068. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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William L. Miller
Primary Examiner
Art Unit 3677

WLM

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves, representing the name William L. Miller.